

Message Text

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11

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C O N F I D E N T I A L SEOUL 6774

JOINT EMBASSY/COMUSK MESSAGE

EO 11652: GDS
TAGS: MARR, KS
SUBJECT: SOFA CASE OF HODGES AND MILLER

REF SEOUL A-257 OF AUGUST 1, 1973

1. CASE OF PVT JAMES E. MILLER AND SP4 ROBERT L. HODGES WHO WERE FOUND NOT GUILTY ON JULY 6, 1973, IN SEOUL DISTRICT COURT OF RAPING PROSTITUTE, HAS BEEN APPEALED BY PROSECUTION AND WILL BE HEARD BY SEOUL HIGH COURT ON OCTOBER 11. APPEAL OF "NOT GUILTY" VERDICT, WHICH IS IN ACCORD STANDARD KOREAN LEGAL PRACTICE, IS BEING HEARD DESPITE EFFORTS UNC STAFF JUDGE ADVOCATE, DEFENSE ATTORNEYS, AND U.S. SOFA JOINT COMMITTEE OFFICIALS TO HEAD OFF HEARING.

2. WE HAVE ARGUED BOTH IN LETTER FROM US SOFA JOINT COMMITTEE REPRESENTATIVE TO HIS COUNTERPART, AND IN DISCUSSION BETWEEN USFK STAFF JUDGE ADVOCATE LAWYERS AND MINISTRY OF JUSTICE OFFICIALS THAT APPEAL OF NOT GUILTY VERDICT VIOLATES 4TH UNNUMBERED SENTENCE PARAGRAPH 9, AGREED MINUTES ARTICLE XXII OF SOFA. WE HAVE POINTED OUT THAT RECORD OF NEGOTIATIONS ON
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ARTICLE XXII SUPPORTS US VIEW AND HAVE NOTED

TRENDS IN ENLIGHTENED COUNTRIES TOWARD PROTECTION OF INDIVIDUAL LEGAL RIGHTS, PARTICULARLY THOSE INVOLVING DOUBLE JEOPARDY AND DUE PROCESS. IN CONVERSATIONS WE HAVE ALSO STRESSED POSSIBLE POLITICAL REACTION IN IN US TO APPEAL FROM ACQUITTAL JUDGEMENT AND HAVE URGED ROKS FIND WAY DISMISS CASE.

3. DESPITE THESE EFFORTS SEOUL HIGH PROSECUTOR IN CHARGE OF CASE REMAINS DETERMINED PRESS APPEAL ON GROUNDS RAPE VICTIM AND PRINCIPAL WITNESS FOR PROSECUTION DID NOT SHOW UP TO TESTIFY DURING ORIGINAL TRIAL. HE CONTENDS THAT COURT COMMITTED LEGAL ERROR IN CONCLUDING HEARING WITHOUT THEIR TESTIMONY. SEOUL HIGH PROSECUTOR IS ALSO INSISTING THAT VICTIM AND PREVIOUSLY ABSENT WITNESS BE HEARD DURING APPELLATE TRIAL.

4. MOJ OFFICIALS INFORM US THAT JUDGE MAY DISMISS THE APPEAL AFTER HEARING CASE. WE BELIEVE IT PRUDENT HOWEVER, TO MAKE ADDITIONAL REPRESENTATION AT THIS TIME TO MOFA REPRESENTATIVES ON SOFA JOINT COMMITTEE IN WHICH WE PLAN TO REITERATE DIFFICULTIES CITED PARA 2 ABOVE. WE WILL STRESS MUTUAL US/ROK INTEREST IN ROKG FINDING WAY TO AVOID CONFRONTATION I THIS AREA WHERE OUR RESPECTIVE HISTORICAL LEGAL PRACTICES DIFFER FUNDAMENTALLY.

5. WOULD APPRECIATE WASHINGTON AGENCY VIEWS AND SUGGESTIONS WELCOMED.

6. DEPARTMENT OF ARMY AND COMUSK HAVE RECEIVED LETTERS ABOUT THIS CASE FROM CONGRESSPERSONS CHARLES RANGEL, OTTO PASSMAN, SHIRLEY CHISHOLM, AND RONALD DELLUMS. HABIB

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